



July 6, 2016

Mayor Paul Soglin  
City of Madison  
210 Martin Luther King Blvd  
Madison, WI 53703

SUBJECT: Continuing Obligations and Property Owner Requirements for City of Madison Rain Garden and Bike Path Property adjacent to Madison Kipp Corporation  
Parcel Identification Number(s): 0710-053-0801-2, 0710-053-0503-4  
Final Case Closure for Madison Kipp Corporation  
DNR BRRTS Activity #: 02-13-562649

Dear Mayor Soglin:

The purpose of this letter is to notify you that certain continuing obligations apply to the City of Madison bike path and rain garden properties adjacent to the Madison Kipp Corporation (MKC) property at 201 Waubesa Street (referred to in this letter as the "Property") due to contamination remaining on the Property. The continuing obligations are part of the cleanup and case closure approved for a portion of the MKC site. The continuing obligations that apply to the Property are stated as conditions in the attached closure approval letter, and are consistent with s. 292.12, Wis. Stats., and the NR 700, Wis. Adm. Code, rule series. They are meant to limit exposure to any remaining environmental contamination at the Property. These continuing obligations will also apply to future owners of the Property, until the contamination no longer exists at the Property.

The Department reviewed and approved the case closure request regarding the polychlorinated biphenyl (PCB) soil contamination, based on the information submitted by MKC. As required by state law, you received notification about the requested closure from the person conducting the cleanup. No further investigation or cleanup is required at this time. However, the closure decision is conditioned on the long-term compliance with certain continuing obligations, as described below.

Continuing Obligations Applicable to Your Property

A number of continuing obligations are described in the attached case closure letter to MKC. The following continuing obligations apply to your Property.

Residual Soil Contamination (ch. NR 718, chs. 500 to 536, Wis. Adm. Code or ch. 289, Wis. Stats.)

Soil contamination remains on the rain garden and bike path property. If this contaminated soil is excavated in the future, the property owner at the time of excavation must sample and analyze the excavated soil to determine if contamination remains. If sampling confirms that contamination is present, the property owner at the time of excavation will need to determine whether the material is considered solid or hazardous waste and ensure that any storage, treatment or disposal is in compliance with applicable standards and rules. Contaminated soil may be managed in accordance with ch. NR 718, Wis. Adm. Code, with prior DNR approval.

In addition, all current and future owners and occupants of the property need to be aware that excavation of the contaminated soil may pose an inhalation or other direct contact hazard and as a result special precautions may need to be taken to prevent a direct contact health threat to humans.

Cover or Barrier (s. 292.12 (2) (a), Wis. Stats., s. NR 726.15, s. NR 727.07 Wis. Adm. Code)

The pavement or soil cover that exists in the locations shown on the **attached map**: “Madison Kipp Corporation..., Location Map, Figure D.2, Arcadis” shall be maintained in compliance with **the attached maintenance plan** in order to prevent direct contact with residual soil contamination that might otherwise pose a threat to human health.

A request may be made to modify or replace a cover or barrier. Before removing or replacing the cover, you must notify the DNR at least 45 days before taking an action. The replacement or modified cover or barrier must be protective of the revised use of the property, and must be approved in writing by the DNR prior to implementation.

The **attached maintenance plan and inspection log (DNR form 4400-305)** are to be kept up-to-date and on site. Inspections shall be conducted annually in accordance with the attached maintenance plan. Submit the inspection log to the DNR only on request.

Structural Impediments (s. 292.12 (2) (b), Wis. Stats., s. NR 726.15, s. NR 727.07, Wis. Adm. Code)

The paved bike path and utility lines as shown in the attached maintenance plan made complete investigation and/or remediation of the soil contamination impracticable. If the structural impediment is to be removed, the property owner, City of Madison, shall notify the DNR at least 45 days before removal, and conduct an investigation of the degree and extent of the contamination below the structural impediment. If contamination is found at that time, the contamination shall be properly remediated in accordance with applicable statutes and rules.

Site Specific Soil Criteria (s. NR 726.15, s. NR 727.07, Wis. Adm. Code)

Soil contamination remains at various locations, as shown on the **attached map**: “Madison Kipp Corporation..., Location Map, Figure D.2, Arcadis”. Samples contained PCBs that met, and in some cases exceeded, the site-specific soil criteria developed for this site.

This property may not be used or developed for a residential, commercial, agricultural or other non-industrial use, unless prior written approval has been obtained from the DNR. The property owner shall notify the DNR at least 45 days before changing the use. An investigation and remedial action to meet applicable soil cleanup criteria may be required at that time.

Geographic Information System (GIS) Registry – Well Construction Approval Needed

Because of the residual soil contamination and the continuing obligations, this site, which includes your Property, will be listed on the Bureau for Remediation and Redevelopment Tracking System (BRRTS) on the Web, at <http://dnr.wi.gov/topic/Brownfields/clean.html>. If you intend to construct or reconstruct a well on the Property, you will need to get Department approval in accordance with s. NR 812.09 (4) (w), Wis. Adm. Code. To obtain approval, Form 3300-254 needs to be completed and submitted to the DNR Drinking and Groundwater program’s regional water supply specialist. A well driller can help with this form. This form can be obtained on-line at: <http://dnr.wi.gov/topic/wells/documents/3300254.pdf>. If at some time, all these continuing obligations are fulfilled, and the remaining contamination is either removed or meets applicable standards, you may request the removal of the Property from the GIS Registry.

Property Owner Responsibilities

The owner (you and any subsequent property owner) of this Property is responsible for compliance with these continuing obligations, pursuant to s. 292.12, Wis. Stats. You are required to pass on the information about these continuing obligations to anyone who purchases this property from you (i.e. pass on this letter), in accordance with s. NR 727.05. For residential property transactions, you are required to make disclosures under Wis. Stats. s. 709.02. You may have additional obligations to notify buyers of the condition of the property and the continuing obligations set out in this letter and the closure letter.

If you lease or rent the property to an occupant who will be responsible for maintaining a continuing obligation, you will need to include that responsibility in a lease agreement, in accordance with s. NR 727.05, Wis. Adm. Code.

Please be aware that failure to comply with the continuing obligations may result in enforcement action by the Department. The Department intends to conduct inspections in the future to ensure that the conditions included in this letter, including compliance with referenced maintenance plans, are met.

These responsibilities are the property owner's. A property owner may enter into a legally binding agreement (such as a contract) with someone else (the person responsible for the cleanup) to take responsibility for compliance with the continuing obligations. If the person with whom any property owner has an agreement fails to adequately comply with the appropriate continuing obligations, the Department has the authority to require the property owner to complete the necessary work.

A legal agreement between you and another party to carry out any of the continuing obligations listed in this letter does not automatically transfer to a new owner of the property. If a subsequent property owner cannot negotiate a new agreement, the responsibility for compliance with the applicable continuing obligations resides with that Property owner.

When maintenance of a continuing obligation is required, the Property owner is responsible for inspections, repairs, or replacements as needed. Such actions should be documented by the Property owner and the records kept accessible for the Department to review for as long as the Department directs.

You and any subsequent Property owners are responsible for notifying the Department at least 45 days before making a change to a continuing obligation, and obtaining approval, before making any changes to the property that would affect the obligations applied to the Property. Send all written notifications in accordance with the above requirements to:

WDNR South Central Region  
Remediation and Redevelopment Program  
3911 Fish Hatchery Road  
Fitchburg, WI 53711

DNR fact sheet, RR-819, "Continuing Obligations for Environmental Protection" helps explain a property owner's responsibility for continuing obligations on their property. This fact sheet should have been sent to you when you received a notification letter before the closure request was submitted to the DNR. You may obtain a copy at <http://dnr.wi.gov/files/PDF/pubs/rr/RR819.pdf>.

Under s. 292.13, Wis. Stats., owners of properties affected by contamination from another property are generally exempt from investigating or cleaning up a hazardous substance discharge that has migrated onto a property from another property, through the soil, groundwater or sediment pathway. However, the exemption under s. 292.13, Wis. Stats., does not exempt the property owner from the responsibility to maintain a continuing obligation placed on the property in accordance with s. 292.12, Wis. Stats. To maintain this exemption, that statute requires the current property owner and any subsequent property owners, to meet the conditions in the statute, including:

- Granting reasonable access to DNR or responsible party, or their contractors;
- Avoiding interference with response actions taken; and
- Avoiding actions that make the contamination worse (e.g., demolishing a structure and causing or worsening the discharges to the environment).



The Department appreciates your efforts. If you have any questions regarding this closure decision or anything outlined in this letter, please contact Michael Schmoller at 608-275-3303.

Sincerely,

A handwritten signature in blue ink, appearing to read 'LH', with a long horizontal flourish extending to the right.

Linda Hanefeld  
South Central Region Team Supervisor  
Remediation & Redevelopment Program

Attach. Madison Kipp Corporation Rain Garden/Bike Path Closure Letter (with maps and maintenance plan)

cc: Alina Satkoski, Madison Kipp Corp., 201 Waubesa Street, Madison, WI 53704